Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS

FOR THE YEAR 1881.

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Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 7th March, 1891.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.
The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General*.
The HON'BLE H. J. S. COTTON.
The HON'BLE P. NOLAN.
The HON'BLE T. T. ALLEN.
The HON'BLE SIR HENRY HARRISON, KT.
The HON'BLE SIR ALFRED CROFT, K.C.I.E.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE DR. RASH BEHARI GHOSE.
The HON'BLE A. H. WALLIS.
The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

NEW MEMBER.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E., took his seat in Council.

COURT OF WARDS ACT, 1879, AMENDMENT BILL.

The HON'BLE MR. NOLAN moved for leave to introduce a Bill to amend the Court of Wards Act, 1879. He said:—

"Mr. President—You are aware that under the existing law the Court of Wards may assume charge of the property of proprietors paying land revenue when they are 'females declared by the Court incompetent to manage their own property; persons declared by the Court to be minors; persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs; persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own

property, or persons who, having ceased to be subject to the jurisdiction of the Court, themselves prefer to remain under its protection, because co-sharers in their estates continue to occupy that position.' There are thus five classes of wards, and the object of the Bill which I now ask leave to introduce is to create a sixth, described as composed of 'persons as to whom the Local Government has, after due enquiry, declared, on their own application, that they are disqualified, and that it is expedient, in the public interest, that their estates should be managed by the Court of Wards.' A provision to this effect was included in a Bill passed by this Council in 1877, but it did not become law as the measure was not sanctioned by the Governor General in Council on account of a technical defect. In recurring to the proposal this Government has been influenced by the experience of certain cases in which proprietors have applied for protection, such as that given by the management of the Court. It will be within the knowledge of the members of this Council that in one instance of this kind, that of the Deo Estate in Gya, a special Act was passed with the consent of creditors; and there are others in which Government intervened executively to advise or assist. Where measures of this character are taken to preserve ancient families, or estates which should not be broken up, it seems expedient that the requisite action should be guided by some general law, such as that which controls the Court of Wards rather than by occasional enactment or individual discretion. The principle involved is to some extent accepted by the present law which, as I have indicated, permits the Court to retain or resume the management of the property of one class of persons not disqualified in any way, namely, wards who have attained their majority but prefer to let their estates remain under the Court on the ground of convenience, because their co-sharers are subject to its jurisdiction. It has, moreover, been pointed out by the Government of India that the law in other Provinces permits the Court to intervene in the cases contemplated by this measure.

"These considerations explain the first two sections of the Bill. The third is so obviously necessary that I need only read it: 'The Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application.' In the fourth section, the needful provision is made for the withdrawal of the Court of Wards from the management of estates of the class in question, on the principle that the charge can be relinquished at any time at the discretion of the Court, and must be surrendered on the

application of the proprietor; provided the property has been freed from encumbrances, but not otherwise. The fifth section is intended to withhold from the Court, in the cases contemplated by the Bill, powers exercised in regard to the property of deceased wards of other classes, but not considered necessary in the present instance. In order to explain the following clause, I may state that under the existing law adult wards of sound mind are not, like minors, limited to an allowance for maintenance, but receive the whole surplus income of their estates, after provision has been made for the cost of collection and for the discharge of debts. It is clearly expedient to follow the same procedure in regard to proprietors disqualified under this Bill.

"The last section is of a general character, for, though suggested by the circumstances of the class of wards created by the Bill, it is made applicable to all estates under the management of the Court. It is intended only to maintain what I understand to be the existing practice in Bengal, which protects property under the management of the Court from being sold or encumbered on account of debts incurred by the ward after he has assumed that character, and therefore has ceased to exercise control over such property. This seems very desirable, inasmuch as the Court could not manage with efficiency, property liable to be charged or alienated without its consent. The present law on the subject is contained in section 60 of the Act which is as follows:—'No ward shall be competent to create, without the sanction of the Court, any charge upon it or interest in his property or any part thereof.' Cases have from time to time come before the Privy Council and the High Court in which, notwithstanding the clause just read, an attempt has been made to enforce claims against the property held by the Court of Wards on account of liabilities incurred without sanction by the proprietor during the period of his disqualification; but I believe that in these provinces all such attempts have failed. The law is at present interpreted by Government with reference to an opinion given by the Legal Remembrancer, from which I may read an extract:—

'The position of a disqualified female—a ward—has been carefully considered in case No. 66 of 1881. The High Court (Field and MacDonell, JJ.) hold that she is competent to contract, but not so as to bind the *corpus* of her property which is under the charge of the Court of Wards. Her contract will be valid only as against the income paid to her and at her disposal.'

"But the Punjab Chief Court, in construing a clause practically identical with section 60 of our Court of Wards Act, 1879, has found that, as the ward may

incur liabilities, and his property under the management of the Court is not expressly protected from sale on account of such liabilities, it can be attached or sold for his debts contracted while under protection. The Government of India has directed attention to this ruling as indicating that it may be advisable to introduce some further safeguard, and this seems specially advisable now that we are creating a class of wards some of whom will, in all probability, be most ready to incur debts. If we desire to maintain what, subject to the superior capacity of others in the Council to speak on such a subject, I may call the law as at present understood in Bengal, no harm can result from guarding it against a construction adopted elsewhere, and on what appear very reasonable grounds. This we do by adding to section 60 the following words:—'Nor shall any decree obtained upon a personal obligation of the ward be executed upon or against his property in the possession of the Court.' It will be understood that this restriction applies only to obligations contracted by the ward after he has assumed that character. His property is of course liable for any debts contracted by him before the Court assumed charge of his estate. It has been suggested that we should go still further and declare all wards incapable of entering into contracts, as has been done in the case of proprietors coming under the Chota Nagpore Encumbered Estates Act, 1876. But it is to be remembered that adult wards receiving the whole surplus proceeds of their estates may be perfectly solvent, and even rich, irrespective of the property held for them by the Court; also that, though disqualified for the difficult task of managing large estates paying revenue to Government, they may be quite capable of entering into the ordinary arrangements and contracts by which we all secure the necessities and conveniences of life.

"Under the circumstances, it seems difficult to adopt the proposal which has been made, I admit, on high authority, to exempt those wards from the primary obligation of paying debts and discharging liabilities of their own contracting. You will observe, Mr. President, that the Bill is of a permissive character. No power is given by which heirs or others interested can force an owner to accept the guardianship of the Court, as they can do under the Chota Nagpore Encumbered Estates Act, nor is Government in any way compelled to comply with an application though made by the proprietor of the largest estate. On the contrary, it is provided that the law shall take effect only when the public interest requires the adoption of such a course. I may add that it is the intention of this Government to insist that before charge of

an estate is assumed by the Court of Wards strict conditions shall be observed, under rules passed by authority, requiring full enquiry, complete accounts and proof of special circumstances to justify State interference. I am well aware that proprietors, even when unable personally to manage their estates, can in these days secure the assistance of honest and capable agents and look forward to action being taken under this Bill only in very exceptional cases."

The Motion was put and agreed to.

The Hon'ble Mr. Nolan applied to the President to suspend the Rules for the Conduct of Business to enable him to introduce the Bill, which was in the hands of Members, and to move that it be read in Council.

The President having declared the Rules suspended—

The Hon'ble Mr. Nolan introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

PUBLIC DEMANDS RECOVERY ACT, 1880, AMENDMENT BILL.

The HON'BLE MR. ALLEN moved for leave to introduce a Bill to amend the Public Demands Recovery Act, 1880. He said:—

"The change it is proposed to make in the law by the Bill, which has been put in my charge is absolutely nothing; but unfortunately it happened that in passing the Bill of 1880 through this Council, three words were allowed to remain in one line of section 7 which have proved a stumbling block in the High Court. I shall not on the present occasion say anything beyond drawing the attention of the Council to the practical necessity which exists for making the change which this amending Act makes in the wording of the section. In the year 1868, as is probably known to many Members of the Council, an Act was passed by which the recovery of debts due to the public was facilitated. In that Act the Collector of the district was authorized, in the case of certain dues, to record a certificate in his office, which certificate obtained the force of a decree of a Civil Court. In 1880 that Act was amended in this Council, and, instead of the power of recording certificates being confined to the Collector of

the district, Sub-divisional Officers and officers empowered by the Government in that behalf to exercise the powers of a Collector, were authorized to record certificates. At the same time that this change was made in the officers empowered to declare debts, numberless forms of debts which were not recognized as realizable under the Certificate Act of 1868 were declared to be realizable under the Certificate Act of 1880. Whereas under the Act of 1868 the Collector of the district might have, during the course of a year, to record perhaps a dozen or two dozens of certificates, under the Act of 1880 the number has increased enormously. I have not the figures for the ten years since the Act has been in force, but I have taken the figures for seven years; and though there has been a constant declension in the number of certificates from 220,000 in 1883-84 to 167,000 in 1889-90, the average for the seven years gives 183,000 certificates to be recorded every year in Bengal. Supposing that these were equally distributed throughout the thirty odd districts in Bengal, a very large number would fall to the share of each district Collector. But, as a fact, they were not equally distributed, and in some districts I see from a letter of the Board of Revenue the number of certificates recorded has amounted to 20,000 in a single year. These certificates fall for the most part under section 7 of the Act of 1880, and it is in that section that the unfortunate words have been allowed to stand, which, as I have said, have given occasion lately to a decision of the High Court. These words are simply 'Collector of the district', and we propose to cut out the words 'of the district.'

"As to the merits of the High Court's decision, I shall say nothing at present, nor upon the matter of the law; but I shall simply point out that it would be unreasonable to throw upon the Collector of the district the mere formal recording of 20,000 certificates in a year. No possible advantage is gained from the Collector of the district signing. Calcutta is a small place compared to a mofussil district, and the number of inhabitants is a little over half a million, whereas in a district there are two or three millions. Would it be reasonable to require the Chairman of the Corporation to make out and sign every bill for taxes, &c., to be served on the rate-payers of the town, and on his failure to do that to declare that there was no legal obligation on the rate-payers to pay the amounts of the bills? It is an absurd duty to throw upon a high executive officer; and all we propose to do is to remove the excuse which the wording of the present Act affords for maintaining this objection. There will be no change made, as I say, in the law, and there will be no change made

in the practice; for, at least since the year 1882, all these certificates have been without objection signed and made by the Deputy Collectors in charge of sub-divisions and by officers expressly authorized by the Lieutenant-Governor to exercise the powers of a Collector under the Act.

"I shall have, when the Bill is actually introduced, something more to say on the matter from a legal point of view; but at present I merely point out, as a practical necessity, that it is impossible that such a principle should be recognized as the High Court lays down, namely, that every one of these contemptible certificates for Rs. 2 or Rs. 5 of road cess or water cess, and so on, must be made and signed by the Collector of the district."

The Motion was put and agreed to.

The Hon'ble Mr. Allen applied to the President to suspend the Rules for the Conduct of Business in order that the Bill may be read in Council.

The Hon'ble the President said:—"As the Hon'ble Mr. Allen's speech has given reasons for the necessity of pushing forward this Bill as quickly as possible, and we hope it may be declared to be law at the meeting of the Council next Saturday, I therefore declare the rules of procedure to be suspended."

The Hon'ble Mr. Allen then introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble Mr. Allen also moved that at the next meeting of the Council on Saturday next the Bill be taken into consideration.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 14th March, 1891.

CALCUTTA;
The 12th March, 1891.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 884G—300—20 3 91.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 14th March, 1891.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.
The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General*.
The HON'BLE H. J. S. COTTON.
The HON'BLE P. NOLAN.
The HON'BLE T. T. ALLEN.
The HON'BLE SIR HENRY HARRISON, KT.
The HON'BLE SIR ALFRED CROFT, K.C.I.E.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE DR. RASH BEHARI GHOSE.
The HON'BLE A. H. WALLIS.
The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

COURT OF WARDS ACT, 1879, AMENDMENT BILL.

THE HON'BLE MR. NOLAN moved that the Bill to amend the Court of Wards Act, 1879, be referred to a Select Committee consisting of the Hon'ble Sir Charles Paul, the Hon'ble Mr. Allen, the Hon'ble Sir Henry Harrison, the Hon'ble Dr. Rash Behari Ghose, the Hon'ble Maharajah Sir Harendra Kishore Sing Bahadur and the Mover.

The HON'BLE DR. RASH BEHARI GHOSE said:—"I object to this motion being brought forward under Rule 32 of the rules passed last year, which provides as follows:—'No such motion shall be made until after a copy of the Bill and a copy of the Statement of Objects and Reasons have been furnished to each member. Any member may object to the motion unless such copies have been furnished to him at least seven days previously; and such objection shall prevail unless the President, in exercise of his discretion, allows the motion to be made.' Copies of this Bill and Statement of Objects and Reasons were delivered to the members on Saturday last. I submit therefore that they have not been delivered at least seven days previously within the meaning of Rule 32, which in law means seven *clear* days excluding both the terminal days. In Maxwell

[*Dr. Rash Behari Ghose; Mr. Nolan; Sir Charles Paul; the President.*]

on Statutes it is said:—'Again, when so many 'clear days,' or so many days 'at least,' are given to do an act, or 'not less than' so many days are to intervene, both the terminal days are excluded from the computation.

"Now if you exclude the two terminal days, Saturday and to-day, there would be only six days left. This objection may seem to be a technical one, but my object in raising it is that sufficient time ought to be given to consider the principle of the Bill. This is the last occasion on which the principle of the Bill can be discussed under the rules of the Council, and the Bill, notwithstanding that it is a very short one, does involve an important question of principle; but apart from that I submit I am entitled to a postponement under Rule 32."

The HON'BLE MR. NOLAN said:—"The hon'ble member's objection is founded on the supposition that this is the last occasion on which the principle of the Bill can be discussed; but I submit that, according to the rules of Council, the principle of a Bill can be discussed at a later period, and that it has rather been our practice to postpone the more serious debate until after the presentation of the Select Committee's report. Rule 33 provides that the principle of a Bill and its general provisions may be discussed on the motion to go into Select Committee, but it by no means excludes their examination at another stage."

The HON'BLE SIR CHARLES PAUL said:—"I think the analogy does not hold good in this case. In the case referred to, the rule provided seven *clear* days. It has always been the practice to send out papers for the Council meeting on the Saturday previous. I do not think the hon'ble member is supported by the authority which he has quoted."

The HON'BLE DR. RASH BEHARI GHOSE said in reply:—"If members are at liberty to discuss the principle of the Bill at a later stage I beg to withdraw my objection."

The HON'BLE THE PRESIDENT said:—"I think the hon'ble member has done wisely in withdrawing his objection, especially as it has been explained that the principle of the Bill can be discussed at a later stage. We are now engaged in carrying this measure forward a formal stage by appointing a Select Committee, and in that Committee not only the details but the principle of the Bill can be considered."

The Motion was put and agreed to.

PUBLIC DEMANDS RECOVERY ACT, 1880, AMENDMENT BILL.

THE HON'BLE MR. ALLEN moved that the Bill to amend the Public Demands Recovery Act, 1880, be taken into consideration by the Council. He said :—

"On the last occasion I stated to the Council that this so-called amending Bill in reality makes no change in the law, and it now remains for me to justify that statement. The dictum of the High Court to which I alluded must therefore be cleared away. That dictum is contained in the following words:—

'Under section 7 of the Act VII of 1880 a certificate under the Act must be made and filed by the *Collector of the district*. It is, however, clear that the certificate, in execution of which the plaintiff's estate was sold, was not made or signed by the *Collector of the district*, but by a Deputy Collector. The Subordinate Judge in his judgment has observed that this Deputy Collector has been authorized by the Lieutenant-Governor to discharge the functions of a Collector under Bengal Act VII of 1880, and no doubt by section 4 of the Act the term 'Collector' has been defined to mean the Collector of a district or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act. But throughout the Act the distinction is clearly drawn between the Collector of a district and a Collector (see sections 5, 9, 15, &c.), and an officer specially appointed to perform the functions of a Collector can only have the powers of the latter and not of the former.'

"The rest of the observations are in the nature of reasoning outside the terms of the Act and do not need any refutation. Now, if we turn to Act VII of 1880, we shall find that the term 'Collector of the district' occurs in the Act in three sections, and only three. To consider how far the words in the two sections other than that to which the High Court has referred support the interpretation which has been put upon the words in section 7, I shall begin at the end. In section 15 it says: 'The Collector of a district may refer to any Deputy Collector, or Assistant Commissioner or Extra Assistant Commissioner subordinate to him any such petition as is mentioned in section 12, and such Deputy Collector, &c., shall hear and determine such petition accordingly.'

"Now the subject-matter of a petition under section 12, which can thus be referred, is to determine on the validity or invalidity of a certificate, the justness of which has been called in question by the debtor. I presume that no one will deny that the pronouncing upon the validity or invalidity of a questioned certificate is a more serious and responsible duty than simply to record a certificate against which no question is raised, and to which the debtor takes no exception. Yet this more serious and responsible duty the Collector of the district is thus empowered to divest himself of, and any Deputy Collector by

that delegation is recognized in the Act as having all the powers of the Collector of the district for the determination of the question. Can it be pretended, then, with any reason, that an officer who is specially appointed by the Lieutenant-Governor to discharge all the functions of a Collector is under the Act not competent to perform the less serious and less responsible duty, namely, that of recording certificates? Furthermore, when we refer back to section 12, we find that the duty of receiving petitions in the first instance is not imposed on the Collector of the district, but simply on 'the Collector;' so that it seems that the words 'Collector of the district' are used indiscriminately with 'Collector' in this matter.

"The second place where the words 'Collector of the district' are found is section 9, which says—

'When any arrear of any of the public demands specified in section 7 is unpaid by any person liable to pay such public demand to a public officer other than a Collector, such officer may give to the Collector of the district in which such person resides a notice in writing, &c.'

"Here we have first a demand stated as being payable to an officer other than a Collector, and notice is to be given to the Collector of the district in which the debtor resides, &c. Evidently the words 'of the district' is a mere note of locality indicating to which Collector among many the officer is to send his requisition. In a later paragraph of this section we find it stated that 'on receipt of such notice such Collector (it does not say 'such Collector of the district') if satisfied that such demand is justly recoverable' may do so and so. It appears therefore that the use of the words 'Collector of the district' in the only two sections where they are used other than in section 7 lends no countenance to the interpretation which has been placed upon the words, and there is no radical distinction between the two officers recognized throughout the Act.

"Now in section 7 it is true that after the enumeration of a number of claims of various kinds recoverable by certificate, the section runs:—'The Collector of the district may make under his hand * * a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office.' Though it here speaks of the Collector of the district making a certificate in these cases, yet we find that wherever reference is made to this section in the subsequent sections of the Act, it is always spoken of as a certificate made simply by 'a Collector.' For instance, in section 10, it says 'when a certificate has been filed in the office of a Collector under the provisions of

sections 5, 7 or 9, such Collector shall issue to the judgment-debtor a copy of such certificate, &c.' Here then we have certificates under sections 5, 7 and 9 all treated together as made by a Collector, and no distinction whatever is made between certificates under section 5 and section 7.

"In section 5 relating to certain debts in respect of arrears of land revenue, &c., it says: 'The Collector may make under his hand a certificate of the amount of arrears so remaining unpaid, &c.' Now it has always been supposed that the land revenue is specially under the cognizance of the Collector of the district, and when the Act thus empowers simply 'the Collector' to make certificates in respect of that form of demand of which the Collector of the district has special cognizance, how can it be said that it requires a more responsible officer to make certificates for such petty demands as are dealt with in section 7? We should expect, if any distinction was intended, that certificates under section 5 should be reserved for 'the Collector of the district,' and those under section 7 should be open to any officer authorized by the Government so to act. But, furthermore, a certificate under section 5 has a particular stringency which is not given to a certificate under section 7. As this Act was originally drafted and introduced, a certificate under section 5 was called a certificate 'absolute,' and no suit in the Civil Court was allowed to call into question its validity. A certificate under section 7 was called a certificate 'conditional,' and could be questioned in a Civil Court. These terms were subsequently abandoned when the Act passed through the Council, but still there remains (*vide* section 6) a peculiar stringency attaching to the certificate under section 5, for no question as to its validity is permitted in the Civil Court until after the amount has been paid. No such condition is imposed as to a certificate under section 7.

"If, then, the more stringent and coercive certificate of section 5 may be made by any one falling under the definition of 'Collector', how can it be supposed that the less stringent certificate of section 7 requires the signature of the district officer himself? The subject-matter of these sections affords no countenance to such a distinction, and the words 'of the district' after 'Collector' in section 7 are clearly due to careless transcription from the Act of 1868.

"Further, when I look through the proceedings which took place on the passing of the Act of 1880 through this Council, I find nothing whatever to show that it was in the mind of any one to make any distinction between the certificate under the one section or the other so far as regards the officer by whom they were to be recorded.

"A minute verbal criticism which isolates a phrase and analyses its words independently of the subject-matter of which the text treats will enable a man to force any meaning he pleases on language, and there is an ostentation of extreme deference to the letter which most effectually destroys the spirit. It has been a not unusual practice for Judges, both here and in England, to carp and gird at the Legislature, and to pretend defective drafting as a cover for mere wilfulness. But such judicial pecking and snapping the Legislature treats with the most perfect indifference and stolidly pursues its way. One is forcibly reminded of the Yorkshireman who, when pommelled by his wife, sat smiling blandly. One of the most remarkable features I have observed in this microscopic criticism to which Acts are subjected is that never by any chance is it employed in furtherance of the object of the Act, or to check the mischief against which the Act is levelled. A genuine emanation from *der Geist der stets verneint*, whenever it comes in, it comes to restrict the operation, to paralyse the activity of the law. It is a sort of legal bacillus as destructive to an Act as Dr. Koch's tubercle bacillus to the human lungs. We know from ancient times that the exaggerated scrupulosity which pays tithe of mint and anise and cummin is quite compatible with neglect of the weightier matters of the law-judgment; and those who strain at gnats are the same who swallow camels. In my thirty years' Bengal experience, I have seen much straining at gnats, and I have seen many camels swallowed. It is not six months ago the hon'ble member, the Advocate-General, assisted at the swallowing of a very big camel. I do not mean that he was aiding and abetting the performance; quite the contrary. With what astonishment all Calcutta then heard that a man who confessed to stealing twelve lakhs from a bank had committed no offence? The exigency of the law was assigned as the ground for this curious result, but, Sir, I dare to say that result had as little foundation in law as in common sense. If the law be defective, how comes it that no steps have yet been taken to mend it? Perhaps, it is not the law but some administrators of the law that needs mending?"

The HON'BLE DR. RASH BEHARI GHOSE said:—"I agree with the hon'ble member in charge of the Bill that section 7 of the Public Demands Recovery Act, 1880, should be amended by the omission of the words 'of the district', not because I think that the judgment of the High Court is wrong, but because a study of the Act has led me to the conclusion that the words 'of the district' were allowed to remain in the section owing to mere inadvertence. I thought,

when the Bill was introduced last week by the hon'ble member opposite, that he was going to bless the High Court for pointing out what was an obvious slip of the draftsman. And I confess I was not quite prepared for the surprise which the hon'ble member had in store for us. Whether it is seemly that the judgment of the highest court in the land—that the judgment of the Chief Justice of Bengal—should be criticized in the way in which it has been criticized, I will leave it to the hon'ble member himself to say in his cooler moments.

"The hon'ble member, whose observations are always seasoned with salt, which, if not exactly attic, is certainly racy of the soil, has thought fit to find fault with the judgment of the High Court because the Judges did not do what Judges in former times were very much censured for doing, that is to take upon themselves the province of the Legislature. Now it is a well-known maxim, familiar to every lawyer, that the duty of a Judge is to expound the law, and not to make law. That may be a very narrow view according to the learned member opposite to take of the duty of a Judge, but it is now the accepted theory, and it will be a pure waste of time to discuss the question whether or not Judges should go further and interpret, according to what used to be called in former times, the spirit of the law? All the latest decisions in England, as well as here, show that the safest course for a Judge is to adhere strictly to the words of the Statute, and if, owing to the incompetency of the draftsman or of somebody else, the Legislature has not been able to express its intention, the Judges cannot supply that deficiency and expound the law according to what the Legislature intended to express by the particular enactment. The question is not what the Legislature intended, but what it has said. I know that nobody is infallible, neither Judges nor even Legal Remembrancers. I venture to think, however, notwithstanding the criticism of the learned member in charge of the Bill, that the judgment of the High Court is, if I may say so without impropriety, perfectly correct. Most of the arguments founded upon the language employed in different sections of the Act lead not to the conclusion that the learned Judges of the High Court were wrong in putting the construction they did on the Act, but that a mistake had been made by somebody, a mistake which we are now about to rectify.

"There is only one other observation which I wish to make, and that is this—It seems to me that the attitude of the hon'ble member in charge of the Bill is somewhat inconsistent. He is going to amend the Act. Why? Because

the Act requires amendment. The Bill is not in the nature of a declaratory Bill. Such instances have, by no means, been of uncommon occurrence in England as well as here, in which the Legislature have said that it never was their intention that an Act should receive a particular construction but they meant that it should have another construction. The Bill before the Council is not a declaratory Bill. It is an amending Bill; and that being so I should have thought that when we are going to amend the Act we cannot very well say that the Act was not ill-drawn; that there was no flaw in it, and that if there has been an error anywhere it was committed by the Judges who were called upon to construe it. I repeat what I said at the outset that although I agree with the hon'ble member in thinking that the Act ought to be amended I agree with him in nothing else."

The HON'BLE MR. NOLAN said:—"The legal argument with which we have been favoured by the hon'ble member in charge of the Bill might, perhaps, have come from him more appropriately in his position in another capacity than that of a member of this Council. He, after due consultation with others, as Legal Remembrancer advised Revenue Officers that a Collector, as defined in the Act, can make certificates under section 7, and on this the Collectors made such certificates. The High Court has now, as we are all aware, come to a different conclusion, and the hon'ble member naturally wishes to defend his own opinion as to the interpretation of the Act—an opinion upon which so much action has been taken throughout Bengal. But Government is in no way concerned with this dispute as to the correct interpretation of the Act. I, for my part, looked into the matter as far as I could, and I can only say that the High Court's decision seems to me to be perfectly reasonable and sound. It seems to me that there is a distinction between certificates under section 5, which relate to debts more easily ascertained, and those made under section 7 of the Act; and that the Legislature really intended in 1880 to require the signature of the Collector of the district to the latter. But this is really immaterial. It is quite sufficient for us to know that it will be greatly to the public convenience that the change now proposed should be made.

"In regard to the certificates now outstanding, which are invalid under the recent decision of the High Court, they amount to some 73,000, and many persons would be put to unnecessary trouble if proceedings had to be recommenced in each case. And as to future operations, as was explained by the

hon'ble member in introducing the Bill, it is impolitic to put a superior officer to do work which can very well be done by the responsible and highly educated gentlemen who fill the position of Collectors under the Act. These are the reasons—reasons of public convenience—on which I, for my part, give my vote in support of the Bill."

The HON'BLE THE PRESIDENT said:—"I do not think I should have exceeded my duty or the powers conferred upon me as President if I had asked the hon'ble member who spoke last but one to abstain from following the line of discussion he took up and to confine himself strictly to the business before the Council. I refrained from doing so, partly because I think it very undesirable to exercise presidential functions with any severity or unnecessary stringency, and also because the hon'ble member was so far within his right that the hon'ble member who opened the discussion had not been checked in the use of language which he thought required some words of rebutment. But I venture to express the hope that what has happened on this occasion may not be taken as a precedent. I would submit that we are assembled here with the object of carrying through important, but somewhat formal, public business, and that it is desirable for us, so far as it is possible, to confine ourselves to that business and to trouble or to please our colleagues and the public as little as possible with the expression of our opinions on matters outside of that business. If I were to give my own opinion at all on the subject which has provoked this discussion, it would be the same as that of the hon'ble member who spoke last as to the construction of the Act by the High Court, namely, that they had no option but to say that the Collector of the district means the Collector of the district. Having said so much, there is no option for us but to strike out the words 'of the district', and there the matter ends. But even if I had thought otherwise, I do not think I should have taken this opportunity or any opportunity of attacking the High Court, or for using language which is privileged language here and which could not be answered by the persons concerned. It is not our business and cannot be our pleasure to criticise the judgments of high public officers who are in no way subordinate to us and over whom we can exercise no control whatever. I have ventured to say these words in the hope that they may be taken as an indication of my wish in the future, that we should not enter into excursive

discussions of this kind but confine ourselves more closely to the business in hand."

The Motion was put and agreed to.

The HON'BLE MR. ALLEN also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA;
The 21*st March*, 1891.

C. H. RÉILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 915G—300—1-4-91.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 18th April, 1891

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General*.

The HON'BLE H. J. S. COTTON.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

HACKNEY-CARRIAGES AND PALANQUINS ACTS, 1866 AND 1878, AMENDMENT BILL.

The HON'BLE MR. COTTON moved for leave to introduce a Bill to consolidate and amend the law relating to hackney-carriages and palanquins in Calcutta. He said:—

"Mr. President—As it is my intention to ask you to be good enough to suspend the Rules for the Conduct of Business with a view to the introduction of the Bill at this meeting, it will probably be unnecessary that I should trouble the Council with any observations on the subject of the present motion."

The Motion was put and agreed to.

The HON'BLE MR. COTTON applied to the President to suspend the rules of business to enable him to introduce the Bill.

The HON'BLE THE PRESIDENT said:—"Our object is to enable this Bill to be passed at a Sessions of the Council which will take place in July and August next, so that the Act may come into effect on the 1st of October following. The importance of that object seems sufficient to justify me in declaring the suspension of the standing rules."

The HON'BLE MR. COTTON said:—"In introducing the Bill to consolidate and amend the law relating to hackney-carriages and palanquins in Calcutta, it will be convenient that I should, in the first instance, refer briefly to the history of the legislation in Calcutta relating to hackney-carriages.

"It is nearly 27 years ago since legislation on the subject was first introduced into this Council. Our much respected fellow-townsman Nawab (then Moulvie) Abdul Latif was placed in charge of the first law relating to hackney-carriages in Calcutta. That measure became law as Act I of 1864 after considerable discussion. The objects of that measure, in the words of the hon'ble member, were 'to restrain the extortion of native livery stable-keepers, provide a regulated scale of fares, and otherwise to place the relations between the carriage hiring community and the owners and drivers of gharries on a satisfactory footing.'

"After a brief interval it was, however, found that Moulvie Abdul Latif's Act required amendment. Although it placed sufficient obligations on the owners of carriages, it was considered that it failed to exercise sufficient control over the drivers of carriages. Moreover, it left practically uncontrolled power in the hands of the registering officer. A Bill was therefore introduced by Mr. F. R. Cockerell into this Council to amend and supersede the former Act, and became law as Act V of 1866. That is the law now in force. There has been no substantive change in legislation on the subject, with the exception of an amending measure introduced by Mr. Reynolds in 1878. The Act of 1866 (Mr. Cockerell's Act) placed the registering officer and the administration of the law relating to hackney-carriages entirely under the control of the Commissioner of Police. The object of Mr. Reynolds' amending Act, IV of 1878, was to authorise the Local Government to place the registering officer under the control and supervision of the Corporation. That Act empowered the Local Government to make an order authorising the Corporation to exercise the powers exercised by the Commissioner of Police, and under that law the necessary order was passed; and since 1878 the registering office and the administration of the Hackney-Carriage Act have been transferred from the Commissioner of Police to the Municipal Commissioners of Calcutta. There was no other change made in the law.

"Now, Sir, you, as well as all the members of this Council, must be well aware that from a long time past there has been growing up a strong feeling of dissatisfaction with the way in which the hackney-carriage

service of Calcutta is administered. The public of Calcutta, both the residents and visitors to the place, have complained, and with good reason, of the extreme inefficiency of the *ticca* gharries of the city and of the disreputable manner in which they are turned out. The municipal commissioners of Calcutta, responding to the public sentiment on the subject, took the matter into their consideration last autumn, and appointed a Committee to enquire into the working of the Act and to suggest amendments. In this Committee the leading members were two representatives of the Trades' Association—Mr. Phelps and Mr. Remfry—and it is to those gentlemen in particular, as well as to the Committee in general, that the thanks of the Calcutta community are due for working out a scheme to improve the working of the hackney-carriage service of Calcutta. The Committee sat several times and their report was laid before this Government on the 30th of March last. Their recommendation was that legislation should be resorted to and that further powers should be given to the Corporation to carry out the objects of the Act. It was felt by the Government that it was very necessary to assist and encourage the Corporation in their praiseworthy endeavours to improve the administration of the hackney-carriage service, and no time was lost therefore in preparing a draft measure and in obtaining the permission of the Government of India to introduce it into this Council.

"Mr. President—As it is not probable that I shall be in Calcutta during the deliberations of the Select Committee on this Bill, I venture to trespass on your time and on that of the Council at somewhat greater length than would otherwise have been necessary, in explaining some of the different changes proposed to be introduced in the substantive law on this subject. I have briefly explained them in the Statement of Objects and Reasons, but it will be convenient that on this occasion I should explain them in somewhat greater detail.

"The first of the changes effected under the new Bill is, to lay down that the working of the Act is to be entirely under the control of the Corporation of Calcutta. Under the existing law, as I have stated, it is in the power of the Local Government to authorise the Corporation of Calcutta to take measures for that purpose, but this Bill will place the working of the Act directly under the Corporation without any delegation of authority from Government.

"It is intended also that financial responsibility shall accompany administrative responsibility. Under section 51 of the present Act, it is laid

down that all penalties and fees levied under the Act shall be disposed of in such manner as the Local Government shall direct. In point of fact, in most cases in which the Act has been extended to mofussil municipalities, it has been directed by the Government that fees and penalties shall be credited to the municipality concerned. But this has not been done in Calcutta. There have been a series of conflicting and varying orders on the subject; but as the orders now stand, fees and penalties, after deducting working expenses, are credited to Provincial funds under the head of Police. A grant is then made to the municipality for the construction and maintenance of stands, and the balance over is again credited to Government. This is a very cumbrous arrangement, which it is undesirable should continue. I have therefore omitted in the present Bill the provision that all penalties and fees shall be disposed of in such manner as the Lieutenant-Governor of Bengal shall direct, and the effect of this omission is, that all fees levied will be credited to the Corporation; that is to say, the fees payable on the registration of carriages, the fees payable on drivers' licenses, as well as any fees which shall be leviable under the Act on account of transfers of registration or copies furnished. All these fees will be credited to the Corporation. But penalties or fines imposed in Magistrates' Courts will be credited, under the general rules on the subject, to the Government. It is of course at the discretion of the Government at any time to order, if it should be thought fit, that fines realised under any special law may be credited to the municipality; but there seems no reason to refer to this in legislation. At present it is contemplated that penalties and fines realised on convictions under the Act shall be credited, as penalties and fines for all other offences are, to the Government.

"Another point of some importance is the arrangement made by this Bill in regard to jurisdiction. The present Act applies to Calcutta and the Suburbs of Calcutta. But since the Calcutta Municipal Consolidation Act has been passed, the expression 'Suburbs of Calcutta' has no longer any definite meaning. As a fact the present law, worked under the registering officer appointed by the Corporation of Calcutta, is administered by the Corporation in communication with the adjoining municipalities, such as the municipalities of Howrah, Cossipore-Chitpore, Maniktollah and Dum-Dum. There is one registering officer maintained in Calcutta who registers gharries for all these neighbouring municipalities; and, under arrangements come to with those municipalities, they receive a certain portion of the fees placed at the disposal of the Corporation.

The South Suburban Municipality is worked separately. There is a separate registering officer there, and I am informed that the gharries of that municipality pay fees twice over both to the South Suburban Municipality and to the Calcutta Corporation. The Bill now before the Council is designed to avoid any difficulties which may be found to result from the present arrangement. It defines 'Calcutta' as it is defined by the Calcutta Municipal Consolidation Act, but the next section (4) says:—'The Local Government may, by notification published in the Calcutta Gazette exclude from Calcutta any local area or include therein any local area in the vicinity of the same.' It will therefore require a notification from the Government to include Howrah or any of these suburban municipalities within the limits of Calcutta for the purposes of this Act. But when they have been included by that notification, the arrangements which are in force in Calcutta will also extend to those municipalities, and it will be left with the local bodies concerned to make arrangements amongst themselves for distributing the fees and apportioning the expenditure.

"The existing law authorises the Local Government to extend the provisions of the Act to any other local area in the Province where it may be found necessary to do so. This has been done in many places, and the same provision is continued in the present Bill. The last section of the Bill, which has been taken from the Madras Act on the subject, is new. It supplies what was an omission in the present law that, when the Act is extended to any town or place, the Local Government may appoint persons to perform the duties imposed by the law on the Commissioner of Police and the Registering Officer. In mofussil municipalities it will be convenient to entrust the powers of the registering officer to some subordinate—it may be of the municipality or it may be some Government official—and the powers of the Commissioner of Police will have to be delegated in the same way to some corresponding authority in the mofussil municipality to which the Act may be extended.

"The next change to which I shall refer is, the year of registration. Under the present law the year of registration dates from the 1st of April. It is proposed in this Bill to make the registration year take effect from the 1st of October, which will be convenient on the general ground that the Calcutta season commences in October or November, and the carriages licensed under the Act will therefore be new and smart at the time of the year when the season commences.

"A more important change relates to the recognition of first class hackney-carriages on the same footing as second and third class carriages. Under the

present law, no hackney-carriage can be registered under the first class unless it belongs to a coach-builder, hotel-keeper or livery stable-keeper, and does not ply for hire in the public streets. The consequence is that no one in Calcutta is aware that he has ever seen hackney-carriages of the first class. They exist in livery stables, but are not marked as such; and to the general public hackney-carriages consist entirely of second and third class carriages. By the change proposed in the Bill, hackney-carriages of the first class will ply for hire in exactly the same way as second and third class hackney-carriages; there is to be no difference in this respect between them whatever. The only difference will be that the license fee and the rates of fare will be higher in the case of first class carriages, and they will therefore be of a better quality. There are also some minor details with which I need not trouble the Council regarding registration and license, the object of which is to strengthen the control of the municipality over the working of the hackney-carriage department.

"Another minor change to which I wish to draw attention is, that the age of the driver, which under the present law cannot be below 14, is raised by the Bill to 16. The fees for registration are also slightly increased. Under the present law a fee of Rs. 3 is paid for first class hackney-carriages, and of Rs. 2 for second and third class carriages. In the Bill before the Council, it is proposed that a fee of Rs. 4 shall be paid for first class hackney-carriages, of Rs. 3 for second class and of Rs. 2 for third class carriages. It is proposed also that, when any change of address is registered, the fee which would be realisable by the Corporation should be eight annas. At present there is no fee for transfer of ownership or changes of address.

"There are sundry other changes in the Bill to which attention will be drawn in Select Committee, especially in regard to the amount of penalties imposed; the general tendency of the changes made being to reduce the penalties, especially in the case of drivers. Under the present Act, it is found that the alternative penalty in default of payment of fine is somewhat excessive. For instance, in the case of a fine of Rs. 10, imprisonment for one month is imposed in default of payment of the fine, and this period of imprisonment seems excessive in comparison to the amount of pecuniary fine. It has been reduced in most cases, so as to be more proportionate to the amount of the fine which it is competent to a Magistrate to inflict.

"Then the most important of the changes I think which the Bill proposes is, that it authorises the Corporation to make bye-laws subject to the approval

of the Government for the working of the Act. It is a serious defect in the present Act that no power is given to make bye-laws. It was not necessary of course that this power should have been given as long as the control of the hackney-carriage service rested in the hands of the Commissioner of Police, but when that power was transferred to the Corporation of Calcutta, it was quite necessary that the power of making bye-laws should also be given to the Corporation. As a fact certain bye-laws have been framed by the Municipality, but as they are not authorised by the law, they are of no legal validity. It is proposed in the Bill that a variety of rules which it is not convenient should be contained in substantive legislation should be made by the Municipal Commissioners and enforced as bye-laws. The first of these has reference to the examination of the qualifications for drivers and the conditions under which they should be employed. This is a very important point. At present, as far as I am aware, drivers are not subjected to any examination at all, and we all know, I think from experience, that their ignorance of the topography of Calcutta is as great as can well be imagined. There is no reason why the standard of intelligence and the knowledge of the streets of Calcutta possessed by hackney-carriage drivers should not be considerably improved. In other countries it is usual to subject such drivers to examination both in driving and topography before they are allowed to take out licenses, and it is desirable that a similar course should be followed in Calcutta. But the rules on the subject should certainly be left to the local body which is responsible for the working of the law and need not find a place in the Act itself. Then there is the description of horses, harness and other things to be used in hackney-carriages, and the condition in which such carriages and the horses, harness and other things used therewith shall be kept. There are also other questions of importance, namely, the size of the carriages and the size of the horses or ponies. These are all matters which ought to be provided for by the controlling authority in bye-laws; and there is the inspection of the premises on which the carriages, horses, harness and other things are kept. It is convenient that rules should be laid down for regular inspection, without which no proper control can be exercised. Then there is also what is of the first importance, namely, the protection of weak, lame and sickly horses. It is not too much to say that in the opinion of the Government this provision is the most important of all. It is a point to which public attention has been most prominently drawn, and it is a point on which the public expect both of the

Government and the Municipality that they will adopt stringent measures to ensure improvement. Then there is the question of the publication of a table of distances. In other countries it is usual at a hackney-carriage stand to find a table of distances from which the public may learn what fare they will have to pay from such a point to such a point. This is a matter which the municipal commissioners should certainly consider, and they probably will prepare tables and have them put up at the stands for the information of the public. It is of course very necessary that these bye-laws should not have effect until confirmed by the Local Government, and this is provided for by the Bill; and a penalty for the infringement of any bye-law is also provided.

"Now I come to the question of rates of fare. They are contained in a schedule annexed to the Act, and it is proposed in the present Bill to make some change in the existing rates. As regards first class hackney-carriages which are not referred to at all in the schedule to the present Act, as they are not under the existing law carriages which ply for hire, it is proposed that the fare by distance should be annas 8 for a mile or less, and 6 annas for every mile or part of a mile over and above the first mile; that the fare by time should be Re. 1 for one hour or less, and 8 annas for every hour or part of an hour beyond the first hour, and that for a whole day consisting of nine hours the fare should be Rs. 5. These are the rates proposed for first class carriages. With regard to second class carriages no change is proposed in the rates of fare by distance or in the fares by time, except that the provision in the present law, which authorises a special rate to be paid for half a day of five hours, is omitted entirely from the new schedule. As to third class carriages there is no change proposed in regard to the fares by distance, but there is a slight increase proposed in regard to the fares by time. The present law imposes a fare of 6 annas for the first hour or part of an hour, this is raised by the Bill to 8 annas, and for every hour or part of an hour beyond the first hour the rate is raised from 3 annas to 4 annas, and for a whole day consisting of nine hours the rate is raised from Re. 1-8 to Rs. 2; and as in the case of second class carriages the rate for half a day of five hours has been struck out. The object of raising the rates in regard to third class carriages is to enable a better standard of carriage and horse to be kept up, as the complaint of the owners of third class hackney-carriages is that really they cannot afford to keep up better carriages or to entertain a better class of ponies, and this slight raising of the rates of fare will remove the cause of this complaint. It is expected of the Corporation that they will insist

on better third class carriages being maintained, and of the public that they will be prepared to pay slightly increased rates of fare in return for a better article.

"The Act relates not only to hackney-carriages but to palanquins, but it is not proposed to make any change in the existing law in regard to palanquins.

"There are various petty alterations, many of a verbal character, in the Bill, and, with reference to the number of changes effected, it has been considered advisable to repeal the existing law entirely and to propose a new enactment in its place. As the President has told you, it is not the intention of the Government to hasten or rush the passing of the Bill in Select Committee. As the Bill has been laid before you to-day after suspension of the rules of business, no doubt it has the appearance of having been pressed somewhat more rapidly than is usual in the case of Bills introduced into this Council, but such pressure was unavoidable having regard to the late date on which the Government received the papers on the subject from the Chairman of the Corporation. The intention of the Government is, that the Bill shall be published in the Gazette and circulated through the press and other channels to all persons interested in its provisions, and that they should be asked to favour the Government with their opinions. It is hoped that these opinions may be collected in the course of two or three months and that it may be possible to pass the Bill during an autumn session, so that it may take effect from the new year which, as I have informed you, it is proposed to date from the 1st of October.

"With these remarks I beg to introduce the Bill and to move that it be read in Council."

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble Mr. Cotton also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Allen, the Hon'ble Sir Henry Harrison, the Hon'ble Dr. Rash Behari Ghose, the Hon'ble Mr. Wallis and the Mover.

The Motion was put and agreed to.

The Council adjourned *sine die.*

GORDON LEITH,

CALCUTTA; *Offg. Assistant Secretary to the Government of Bengal,*
The 24th April, 1891. *Legislative Department.*

Reg. No. 72G—300—29-4-91.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Wednesday, the 5th August, 1891.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURRUKH SHAH.

The HON'BLE DR. RASH BEHARI GHOSE.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

HACKNEY-CARRIAGES AND PALANQUINS ACTS, 1866 AND 1878, AMENDMENT BILL.

The HON'BLE THE PRESIDENT said:—"We have met at an extraordinary meeting of the Council in order to effect the passing of the Hackney-carriage Bill. The object of calling an extraordinary meeting of the Council to-day has been that, if we can pass the Bill to-day and obtain the sanction of the Government of India to it, there will be plenty of time before the commencement of the Act to enable all persons concerned in the hackney-carriage trade to make their arrangements to meet the provisions of the amended Act before the date when it comes into force, namely, the 1st October. It seemed to me that, if the passing of this Bill was put off till the end of August, and if there should be any delay in correspondence with the Government of India, the time might have run so close that the proprietors of hackney-carriages and other persons interested in the provisions of this Bill might easily have complained that sufficient opportunity had not been given them to consider and make arrangements to meet the changes which have been introduced. Since the Select Committee sat and made several amendments in the Bill, the Municipal Commissioners have held a meeting and have proposed some further slight amendments. Many of these seem to me to be desirable and certainly worthy

of our consideration. Bearing in mind that it was originally at the request of the Commissioners that this amendment of the law has been undertaken, I think we should not be acting with sufficient respect and courtesy to the Commissioners if we declined to take full notice of the amendments which they have proposed, even though they had been submitted at so late a date; and I think that no injury will be done and the danger of precipitate legislation will be avoided if we take these amendments into consideration upon the present occasion. I therefore desire to announce that the standing rules of the Council will be suspended in order to take the amendments into consideration, and I declare the Council rules suspended."

The HON'BLE MR. WALLIS presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Hackney-carriages and Palanquins in Calcutta.

He said:—"It will be remembered that this Bill was originally placed in charge of the Hon'ble Mr. Cotton, but on his departure for England the Hon'ble the President was pleased to transfer its conduct to my hands. My hon'ble colleague, in moving for leave to introduce this Bill, dwelt at some length on the history of legislation in Calcutta relating to hackney-carriages, and explained on what grounds it had become necessary to alter the existing law. The chief reasons put forward were the very unsatisfactory working of the Hackney-carriage Department, the extreme inefficiency of the *ticca* gharries in the city, and the disreputable state in which they are permitted to ply for hire. The Municipal Commissioners had given special attention to the subject, and in October of last year appointed a Committee to enquire into the working of the Department, and to suggest such alterations and amendments in the Act which, in their opinion, would be likely to lead to a more satisfactory state of affairs.

"The report submitted recommended that legislation should be resorted to, and that greater powers should be given to the Commissioners in order to enable them to carry out the necessary improvements in the hackney-carriage service. The draft Bill, together with the opinions expressed by the several Associations and officials, have been very carefully considered by the Select Committee, and the changes and alterations made have been embodied in the Committee's Report which has been in the hands of hon'ble members for some time past. It will not be necessary, Sir, for me to take up much of your time, as the

[*Mr. Wallis.*]

Hon'ble Mr. Cotton in his introductory speech explained to a very great extent the proposed changes in the law; but there are a few points to which I must allude, and others to which, perhaps, it would be as well to refer again. One of the most material changes proposed by the Select Committee is in section 60 of the Bill, which provides for the employment and final distribution of the fees and fines levied under the Act. The Committee regret that they were unable to agree with the proposal made by the Hon'ble Mr. Cotton to omit from the Bill the provision that all penalties and fees should be disposed of in such manner as the Government of Bengal shall direct. The effect of such omission would be that only the fees could be credited to the Corporation, that is to say, all fees payable on registration of carriages, the fees payable on drivers' licenses, as well as any fees which shall be levied under the Act on account of transfer of registration or on copies furnished, but all penalties and fines imposed in a Magistrate's Court would be credited to Government. Such a course would not justify the division of the fees between the municipalities concerned, and as it is intended that the municipalities are to have both administrative and financial responsibilities, this section provides that all fees and fines shall first be credited to a fund to be called the 'Hackney-carriage Fund,' which is to be employed in carrying out the purposes of the Act, and in the event of one or more municipalities being included in Calcutta by virtue of a notification published under section 4, then such fund shall yearly be divided between the Calcutta and such other municipality or municipalities as the Local Government may determine.

"In this connection, in section 15, clause (*4*), the Select Committee by an oversight omitted to alter the words 'shall be forfeited to Government' to 'shall be credited to the Hackney-carriage Fund,' and I now ask that the alteration may be permitted.

"The section in the draft Bill which was numbered 60 did not appear to the Committee to be sufficiently comprehensive. In re-casting this section, which is now No. 61, the Committee have extended its scope, by which the Local Government may, whenever the Act shall be extended to any other town or place, appoint persons, either by name or official designation, to carry out the duties imposed, and exercise the powers conferred by the Act on the Commissioners and the Chairman of the Commissioners. In clause (*2*) of this section provision has been made for the modification of certain other sections when the Act is extended beyond the local limits of Calcutta, which

will enable the Local Government, by notification in the Calcutta Gazette, to provide that the language commonly used in such extended districts shall be substituted for those provided in the Act. This is a very necessary provision, as it is most desirable that the plate affixed to a conveyance specifying the fare according to distance and time which may be legally demanded and taken from the hirer shall be in the language most in use in each district.

"Under the existing law the Registering Officer is appointed by the Government, and every act, matter or thing done by that officer (under or by virtue of the Act) is subject to the order, disposition and control of the Commissioner of Police. In the Bill which is now under the consideration of this Council, it has been provided that this officer shall be appointed by the Commissioners, and that the working of the Act shall be entirely under the control of the Corporation of Calcutta. Full powers have been given enabling the Commissioners (subject to the approval of Government) to frame bye-laws and rules which may be legally enforced. This will place the Commissioners in a position to deal summarily with all questions which may arise in connection with the working of the Act, and will, no doubt, lead to the much needed reforms.

"Section 5, as originally drafted, placed the Registering Officer under the control of the Commissioners. This the Committee considered inadvisable, and have therefore altered the section so as to place him under the immediate control of the Chairman of the Corporation. This for obvious reasons must be preferable; for if the Act is to lead to the better administration of the Hackney-carriage Department, the Chairman's orders should be final. It is also desirable that the status of this officer should be very materially improved, and the Committee have therefore, under clause (*3*) of the same section, made his appointment and removal subject to section 41 of the Calcutta Municipal Consolidation Act of 1888.

"In section 23, the word 'knowingly' has been omitted, as it has been found difficult in practice to prove to the satisfaction of the presiding Magistrate that the owner knowingly permitted an unlicensed person to act as driver. The fact of a person acting as driver being unlicensed should suffice for the conviction of the owner. In like manner the Commissioners have omitted in section 27, clause (*2*), the words 'wilfully' and 'fraudulently;' for a driver who neglects to deliver up, uses or wears an expired ticket, should be convicted without the necessity of proving that he did so wilfully or fraudulently. It will have been noticed that the tendency of the Bill is to reduce the penalties,

especially in the case of drivers. Under the existing Act it was found that the alternative penalty in default of payment of fine was in some instances excessive; these have been reduced in the present Bill, but with regard to section 17 the Committee were of opinion that the fine of Rs. 10 for the offence of plying for hire without having a proper plate affixed is wholly inadequate, and would not act as a deterrent. The fine has therefore been raised to Rs. 50, the amount provided under the existing Act.

"In the first schedule of the Bill the Committee deemed it advisable to somewhat enhance the daily fare for a carriage of the second class to Rs. 3-8, and to allow the old rule to stand as regards the fare of Rs. 2 for five hours. Under the existing Act the fare for this class, if taken at 12 annas for the first hour and 6 annas for every other hour or part of an hour beyond the first hour, the sum payable for eight hours amounted to Rs. 3-6, but for a whole day of nine hours to only Rs. 3. This was certainly an anomaly, and by the adoption of the present proposal the fare for eight hours would be the same, Rs. 3-0, and for nine hours Rs. 3-8.

"Should the Bill, as amended, be accepted by the Council and passed into law, the Municipal Commissioners will have its entire working in their hands. They will be empowered to frame bye-laws and rules which can be legally enforced, and there is no doubt that full advantage will be taken of these powers in order to ensure a better description of carriages and horses being used, and a more reliable class of men being employed as drivers. The claims of owners and drivers have been carefully considered. The fares have been slightly increased, and the doubt which existed as to the sum which could be legally demanded after the first five hours removed, while the penalties in several instances have been considerably reduced. The whole Bill has been framed with the object that Calcutta should be better served in this direction, that due protection be given to both owners and hirers, and the result, it is hoped, will be a very material improvement in the hackney-carriage service."

The HON'BLE MR. WALLIS also moved that the Report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The Motions were put and agreed to.

The HON'BLE MR. WALLIS also moved that in clause (*4*) of section 15, the words 'shall be forfeited to the Government' be omitted, and the words 'shall be credited to the Hackney-carriage Fund' be substituted for them.

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT said:—"I have to move in clause (*2*) of the same section an amendment which has been proposed by the Commissioners at their recent meeting. They desire to appoint one or two or more Inspecting Officers whose business it shall be to watch over the carrying out of the Act, and to investigate the extent to which any infringement of its provisions takes place. The provision before us gives power only to a Police Officer to seize and remove to a police-station any carriage which has not been duly registered. The Commissioners urge that if they have paid officers whose business it is to go about and see that no carriage is plying for hire which has not been duly registered and does not carry its plate, those officers should have power at once to arrest the driver and to carry the carriage to the nearest police-station, instead of waiting till they can find a police constable whom they can induce to arrest the driver, while in the meantime the driver might drive off as fast as he can. I understand this point was considered in Select Committee, and was not adopted, and it is therefore with considerable hesitation that I ask the Council to consider it. But I do so because I am under the impression that there has probably been a misunderstanding, that they thought this power would probably be given to irresponsible officers drawing inconsiderable salaries. But this is not the case, as the proposal is to appoint officers of standing and position to this work. A parallel case is to be found in the working of the Act for the Prevention of Cruelty to Animals. Under the law no person but a police officer can arrest a person committing an offence under that Act. We have a most useful and philanthropic society which has its agents scattered over the whole town, and constantly taking notice of acts of cruelty and enforcing the law against persons who commit offences under that Act; and in order that they might act with better effect, these emissaries of the society have been vested with the powers of police constables to enable them to make arrests. It is admitted that the power thus conferred has not done any harm, but, on the contrary, has distinctly worked good. The objection, I understand, has been raised that if a driver sees a person looking like a private person coming to arrest him, he might conceive that he is not invested with any authority, and a disturbance might arise consequent on the driver exercising the right which he might believe himself to possess, viz., the right of

private defence. I have therefore thought it best to move the amendment proposed by the Municipal Commissioners in the following form, namely, to insert after 'Police officer' in clause (2) of section 15, the following words:—'or any person duly authorized in that behalf by the Commissioners, and wearing a distinctive badge to indicate his official capacity.' I trust that this amendment will commend itself to the Council. I trust they will think that by this provision any danger likely to arise in consequence of what may be thought to be unlawful interference will be avoided."

The HON'BLE SIR ALFRED CROFT said:—"I am glad that Your Honour has moved this amendment because it falls in with a suggestion that I intended to make with regard to the appointment of Inspectors of hackney-carriages. Bye-laws may be framed with any degree of detail and stringency, but unless officers are appointed with the express object of seeing their provisions carried out, they will prove inoperative. I believe that many of the complaints as to the state of hackney-carriages are due to the fact that the carriages are repaired and painted and patched up for the day of registration; they pass in review so as to make a fair show before the Registering Officer, but the repairs are so badly done that they soon fall to pieces, and so remain till the next registration-day when they are patched up again. It is stated that the Registering Officer has to pass in review some fifty carriages in a morning, and therefore his inspection cannot but be very superficial. A second inspection and registration at the end of six months has been suggested, but even that is not sufficient. What seems to me to be wanted is to appoint a whole-time officer—in fact more than one whole-time officer, at any rate one for the north and one for the south of the town—to go about the hackney-carriage stables; to inspect the carriages and examine their springs and general state; to look at the horses and ponies; to examine the harness and see that it is strong and serviceable; to see that the drivers are capable men and decently dressed; and to warn them against an offence frequently committed, especially in Chowringhee, namely, that of racing their carriages against each other at full gallop, to the imminent danger of passers by and of other carriages. Unless the Municipality should prefer to appoint independent Inspectors, the officers whose appointment this amendment contemplates might well be entrusted with such duties. The Inspectors should be subordinate to the Chairman of the Corporation, and should report directly to him. On these grounds I have much pleasure in supporting this amendment."

[*Dr. Rash Behari Ghose; the President.*]

The HON'BLE DR. RASH BEHARI GHOSE said:—"As a member of the Select Committee, I am bound to say that if the case had been properly represented to us, we should certainly have felt considerable hesitation in rejecting the suggestion made by the Municipal Commissioners. Now, however, that we are assured that only officers of a superior grade will be deputed to perform the duties prescribed in section 15, and that these officers will have to wear a distinctive badge, the reasons which impelled the members of the Select Committee to reject the amendment no longer hold good, and I am quite prepared to support it."

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT moved that in section 21, clause (*2 b*), line one, the words 'and father's name' be inserted after 'name.'

He said:—"This was suggested by the Commissioners in order to avoid the possibility of substituting one person of the same name for the person to whom the license to act as driver has been granted. I do not suppose there will be any objection to this amendment."

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT said:—"The next amendment which I have to move was not proposed by the Commissioners, but has occurred to myself in examining the project of law before us. It is in section 34 which runs as follows:—'The driver of every hackney-carriage shall carry in or upon such carriage a reasonable quantity of luggage for every person hiring such carriage without any additional charge.' It seems to me that the words 'reasonable quantity' is hardly such a term of precision which should be put into a legislative enactment, and that it might unnecessarily tend to disputes and disagreements between the driver and the hirer. It may be urged that this section has only been copied from the former Act; that it has been in force ever since Act V of 1866 was passed; and that no difficulty has been found to arise. But I wish to point out that one of the main, if not quite the main, object why we are now legislating is the object of humanity, to relieve the animals which draw hackney-carriages from that strain to their physical endurance to which we now find them subject. We have provided with great care that a carriage may carry only a certain number of persons; that the Registering Officer should see that the carriage must

be of sufficient strength and the horses of sufficient size to draw four persons of average weight. But if we allow any amount of luggage to be put on the roof in addition to having four persons inside, we may possibly be putting such a strain on the poor animals as they might not be able to bear. Therefore, I propose, in substitution of the vague expression 'reasonable quantity of luggage' to insert the words 'a quantity of luggage not exceeding two maunds. If we fix the quantity at two maunds, we shall know how much the carriage may be expected to carry and the animals to draw. I trust a restriction of this kind will commend itself to you as a move in the direction of a humane regard for the condition of the animals which has induced the Council to consider the Bill now before us."

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH seconded the motion.

The HON'BLE DR. MAHENDRA LAL SIRCAR said:—"I wish to put before the Council the case of only one person hiring a carriage and he alone travelling in it. In such a case the conveyance would be lightened to the extent of the weight of three persons, and, in my humble opinion, it would be unfair to limit the weight of luggage to two maunds. I would, therefore, suggest that in lieu of the three other persons which the carriage is licensed to convey, the driver should be bound, if required, to carry three additional maunds of luggage, one maund in lieu of each such person. It will be a hardship if a person hires a carriage to convey him to a railway station if he is not allowed to carry with him on the carriage the full amount of luggage he has, provided it does not exceed five maunds, but where four persons travel in the carriage he agrees with the Hon'ble the President that the limit of two maunds of luggage is reasonable."

The HON'BLE SIR ALFRED CROFT believed there was some provision of the kind in the London Hackney-carriage Act.

The HON'BLE THE PRESIDENT said:—"The London rule, I think, is that for every outside parcel 2*d.* extra is paid. It seems to me that the suggestion made by the Hon'ble Dr. Mahendra Lal Sircar is a reasonable one, and I accept it, and therefore now move the substitution of the words 'a quantity of luggage not exceeding two maunds, together with one additional maund for every person below four carried in the carriage.'"

The Motion was put and agreed to.

[*Dr. Mahendra Lal Sircar; Sir Alfred Croft; Dr. Rash Behari Ghose; Mr. Wallis; Shahzada Mahommed Furrokh Shah.*]

The HON'BLE DR. MAHENDRA LAL SIRCAR moved that in section 39, clause (*2*), line 6, the word 'or' be omitted, and the words 'and in default of payment' be substituted.

He said:—"As the section now stands the Magistrate might either sentence the offender to a fine or to imprisonment. I think the imprisonment should only be imposed in default of payment of the fine. It would be very hard if a person may be sentenced to imprisonment for non-payment of the fare due by him to a hackney-carriage driver."

The HON'BLE SIR ALFRED CROFT in seconding the motion said:—"It seems to me difficult to imagine a case of evasion of payment of fare which is so bad as to demand a sentence of imprisonment, and that the imposition of a fine of Rs. 50 would meet the exigencies of the case."

The HON'BLE DR. RASH BEHARI GHOSE said:—"I am sorry I cannot support this amendment. If I remember rightly, the question was discussed in the Select Committee, when we thought there might be special cases in which a Magistrate would be justified in awarding imprisonment, not necessarily for one month which is the maximum, but for such period as the Magistrate might think the man deserves. A man who evades payment of the fare, or, in other words, attempts to cheat the driver, is certainly not deserving of much pity. And I think we may trust the Magistrate who would have to deal with the case to exercise his discretion in a proper manner. If we leave out the imprisonment altogether, in a very bad case of evasion, the offender will get off very lightly. I therefore think this provision ought to stand as it is in the Bill."

The HON'BLE MR. WALLIS said:—"I think the section as it is now worded should be allowed to stand as has been mentioned by the hon'ble member who spoke last; this question was considered in Select Committee. The very words proposed by the hon'ble mover of the amendment were recommended by the Central Mahommedan Association, but their recommendation was duly considered, and it was decided that a person who actually evades payment of fare commits an offence which rightly subjects him (at the discretion of the Magistrate) to the penalty of imprisonment."

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH said:—"If I remember rightly, a man who evades payment of a railway fare is only subject to the penalty of fine."

[*The President; Maharajah Sir Harendra Kishore Sing Bahadur.*]

The HON'BLE THE PRESIDENT said:—"I find, on referring to the Railways Act, that a person who travels without a ticket, or attempts to cheat by not paying the full amount of fare, is liable to a fine and not to imprisonment. But before I put the question to the vote, I should like to point out in the first place that this provision stands in the Bill as it exists in the present Act. The alternative given to the Magistrate of imposing imprisonment instead of fine, and not only in default of payment of fine, has been in force since 1866; and this fact is an argument for not changing the law unless anyone happens to know of any grievous injury having been inflicted under the authority of the present law, which shows that there is need for its amendment. It seems to me that there are cases in which the Magistrate might be bound to inflict imprisonment and not fine. I am told that it not unfrequently happens that sailors take a hackney-carriage, and after using it try to defraud the driver and escape by going on board their ship. In a case of that kind a sentence of fine would generally be a *brutum fulmen*. It would have no effect; and the imprisonment which would be imposed in default of payment of the fine would be simple imprisonment, which would be rather in favour of the sailor than a punishment to him, because we know that according to the old saying life on shipboard is imprisonment with the chance of being drowned, and simple imprisonment is imprisonment without the chance of being drowned. To him being detained from his ship by being sent to a prison would not be such a severe punishment, as it would be to any ordinary person. The fact that the Select Committee considered this question and decided that the alternative punishment of imprisonment should remain should of course weigh with the Council to a considerable extent, and unless any strong grounds are put forward to invalidate reasons which led the Select Committee to the conclusion to which they came, we are bound to pay to it the greatest respect. We must also bear in mind that two of the members of the Select Committee are absent, and therefore the voting power of the Select Committee is weaker than usual."

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR observed that, in his opinion, the penalty to be inflicted for the offence here provided for, whether it should be fine or imprisonment, should be left to the discretion of the Magistrate.

THE Motion was then put to the vote and negatived.

The HON'BLE THE PRESIDENT said:—"In section 42 a new provision has been adopted taken from the Madras Act III of 1879, under which, if a dispute arises between the hirer and the driver, the hirer may require the driver, or the driver may require the hirer, to proceed forthwith to the nearest Magistrate's Court, and the then sitting Magistrate shall hear and determine the suit in a summary way. The addition to the existing law is contained in the words 'and the driver may require the hirer' to go to the Magistrate's Court and settle the question off-hand. I think the hon'ble members must admit on consideration that very great inconvenience may result to the hirer from this innovation. My hon'ble friend Dr. Rash Behari Ghose, for instance, may be proceeding to the High Court, and if in case of a dispute arising between him and the driver he can be forthwith taken before a Magistrate, he may be put to great inconvenience, and his client perhaps, may lose his case for want of the valuable services of his advocate; or a gentleman may be on his way to a railway station and may miss his train; and, lastly, there is the strongest case of all, the case put by a memorial presented by my friend Nawab Abdool Latif of a *purdah nashin* lady whose appearance in court would be impossible. I therefore propose that these words which have been imported from the Madras Act be omitted, and that we should fall back on the terms of the original Act with one slight exception to provide for cases in which the Magistrate being engaged in some important case is not able to hear and determine the dispute, or when no Magistrate may be sitting at the time. The section which I propose to substitute for section 42 of the Bill will run thus:—

'In case of any dispute arising between the hirer and the driver of any registered hackney-carriage, the hirer may, if any Magistrate be then sitting, require the driver to drive to the Court of such Magistrate, or if any Magistrate be not then sitting to the Registering Officer; and if any driver shall refuse to obey such requisition, it shall be lawful for the hirer to give such driver into the custody of the nearest Police Officer. Such Police Officer shall thereupon take the driver and the hirer, together with the carriages and horses, to such Court or Registering Officer, and the then sitting Magistrate or Registering Officer shall, in either of the cases aforesaid, hear and determine the dispute in a summary way.'

The HON'BLE DR. RASH BEHARI GHOSE said:—"I have much pleasure in seconding this amendment. I pointed out to my colleagues in the Select Committee that this provision was liable to be abused by the drivers of hackney-carriages. In the case put by Nawab Abdool Latif, the abuse would be very great. But I yielded rather too readily perhaps to the suggestion of my colleagues that the section would practically be a dead letter, and

[*Dr. Rash Behari Ghose; the President; Dr. Mahendra Lal Sircar.*]

that a corresponding provision was to be found not only in the Madras Act, which had led to no harm, but, if I am not mistaken, in the English Act also. I am glad that this amendment has now been moved."

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT said:—"The next amendment which I have to move is a very small one in section 51, clause (2) which provides that 'all the provisions of this Act in any way relating to the taking out, granting, renewing or producing the licenses, or to the issuing, granting, wearing or using tickets granted to drivers of hackney-carriages, shall be applicable in like manner to the bearers of palanquins.' It is proposed to insert the words 'or using' after 'producing,' in order to meet the case of a palanquin-bearer transferring his license to anybody else. I do not think any objection can be taken to the amendment."

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT moved that in section 53, clause (1 *b*), the words 'dimensions of such carriages' be inserted after 'hackney-carriages.'

He said:—"This seems to me a very useful provision suggested by the Commissioners. It will enable the Registering Officer to see that hackney-carriages are not made of a size which is too heavy for the animals drawing them, and will tend to the same humanitarian direction which we are all agreed upon."

The HON'BLE DR. MAHENDRA LAL SIRCAR seconded the motion.

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT moved that in section 56, the following words be substituted for the whole of the proviso from line 8 to the end:—'The omission to register any hackney-carriage or palanquin or to take out a license, shall be deemed to be a continuing offence.'

He said:—"It is the form of words proposed by our legal adviser as better suited to express the intention of the section."

The Motion was put and agreed to.

The HON'BLE DR. MAHENDRA LAL SIRCAR moved that in the first schedule, Rs. 3, the present rate of hire for a second class carriage for a whole day consisting of 9 hours, be substituted for Rs. 3-8, the rate entered in the amended Bill.

[*Dr. Mahendra Lal Sircar; the President; Sir Alfred Croft.*]

He said:—"We have sufficient evidence, and we see it especially from the remarks made by Mr. Phelps at the last meeting of the Municipal Commissioners, that the owners of second class carriages gain ample profit from the present rates of hire. The rates have been enhanced in the Bill in order that the carriages might be improved, but as has already been pointed out the disreputable condition of the hackney-carriages in Calcutta is not due to the smallness of the fares that are paid, but to the want of proper supervision and inspection. With the proper supervision and inspection to be provided by this Bill, we should have better carriages, and I do not see any necessity for enhancing the rates of fare for second class carriages. To enhance the rates will be a great hardship to the middle class people, who are the hirers of these carriages. Besides there is an anomaly in the schedule of rates for second class carriages which will be removed by the amendments which I now propose. The anomaly is that for the first hour the fare is 12 annas, and for every hour or part of an hour after the first the fare is 6 annas, and for half a day of 5 hours the fare is Rs. 2; so that the fare for four hours is Re. 1-14, whilst for the fifth hour it is only 2 annas, and then for every subsequent hour the fare is 6 annas. This anomaly will be removed by the amendment I propose to substitute, Rs. 3 for Rs. 3-8. If that amendment is carried, I am prepared to move other amendments with reference to the rates for the rates for second and third class carriages."

The HON'BLE THE PRESIDENT said:—"As nobody seconds this amendment, I shall take it that the sense of the Council is against it."

The HON'BLE SIR ALFRED CROFT said:—"The reason why I do not second the amendment is that if the Corporation carry out the suggestion I made for the appointment of Inspectors, it will keep the carriages more up to the mark, and there will consequently be more expense to the owners, and they will be so far recompensed by the slight increase of rates proposed in the schedule."

The HON'BLE DR. MAHENDRA LAL SIRCAR said:—"The anomaly is that for four hours the fare will be Re. 1-14, and for five hours Rs. 2, so that for 2 annas the hirer can keep the carriage a whole hour longer; whereas for each of the succeeding hours he will get 6 annas. This is an anomaly which would be removed if my amendment had been carried. I now move that the charge for a second class carriage for the first hour be 12 annas, for the second and third hours, or any part thereof, 6 annas, and for every hour beyond the third hour

the charge shall be 4 annas; and then we shall do away with the necessity for fixing the rates for half a day of 5 hours, and a whole day of 9 hours. These rates will themselves amount to Rs. 2 for 5 hours and Rs. 3 for 9 hours. Similarly, in the case of third class carriages, I shall propose that the rate for the first hour shall be 6 annas, 4 annas each for the second and third hour, and 3 annas for each hour after the third hour; and these rates will amount to Rs. 2 for 9 hours. These amendments have the recommendation of simplicity as well as of logical consistency. They are not unfair to the owner, and they are very fair to the hirer. It will certainly be a hardship to the middle and poorer classes if the rates proposed in the Bill are retained. My present motion is confined to the rates for second class carriages which I have specified."

The HON'BLE THE PRESIDENT said:—"As the motion is not seconded, I take it that the sense of the Council is against this amendment too."

The HON'BLE DR. MAHENDRA LAL SIRCAR then moved that for third class carriages the following rates be entered in lieu of the rates now in the schedule, namely, that the rate for the first hour shall be 6 annas, for the second and third hours or part thereof 4 annas, and for every subsequent hour or part of an hour 3 annas.

The HON'BLE THE PRESIDENT seconded this amendment. He said:—"It is one which I independently intended to bring forward, but I am glad the hon'ble member has forestalled me. The Municipal Commissioners have discussed this subject very fully at their recent meeting, and they proposed the alteration now before the Council. Mr. Phelps, one of the Commissioners, who originally brought forward the proposal to amend the Hackney-carriage Act, suggested this very amendment, and after a long debate it was carried. We want to justify the imposition of the demand to be made upon the owners of third class carriages for the improvement of the condition of their carriages and ponies by making their work a little more remunerative. On the other hand, we are anxious not to make the rates of hire oppressive especially on the poorest and lowest classes. It is these persons whom we are specially bound to protect. The well-to-do middle classes who chiefly hire second class carriages can defend themselves, but those who use third class carriages we, in our position as representing the Government, are above all people

bound to consider. The result of the amendment before the Council will be that for each of the second and third hours of hiring one anna more will have to be paid than at present, and the rates would not be different in other respects. But this will justify the Commissioners in demanding that the owners shall put themselves to larger expenditure to put their carriages in good order, and I trust the rates of fare will not be considered too oppressive on the poorer classes in whose behalf the Select Committee, and I believe the Municipal Commissioners also, received many representations, and I hope this amendment will be considered favourably by the Council."

The HON'BLE DR. RASH BEHARI GHOSE said:—"I also think that this amendment should be carried for the reasons which have been given by my colleagues. It will be a decided improvement, and, speaking for myself, I am obliged to the Municipal Commissioners for pointing out the mistake which the members of the Select Committee had made."

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT said:—"Another suggestion has been made by the Municipal Commissioners to the effect that the rates of fare for all classes of carriages after the ninth hour should be specified in the law, because the decision of the Magistrates in this respect have varied, and there is no certain rule for guidance, either of the public or of drivers. I therefore move that another column be added to the schedule providing that for every hour, or part of an hour, after the ninth hour, the rates of fare shall be for first class carriages 8 annas, for second class carriages 6 annas and for third class carriages 3 annas. This will be the best way to simplify and settle a matter in respect of which there is now considerable doubt."

The HON'BLE MR. WALLIS seconded the motion.

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT said:—"I have also a suggestion to make with regard to the foot-note to this schedule. According to the foot-note as it now stands in the Bill, the Council will observe that the fares are to be paid, either by distance or by time, at the option of the hirer, to be expressed at the commencement of the hiring; if not otherwise expressed, the fare to be paid according to time. I think it is desirable that we should also provide that the

[*The President; Maharajah Sir Harendra Kishore Sing Bahadur; Sir Alfred Croft; Mr. Wallis.*]

hirer shall not have the benefit of the rate for 5 hours or for 9 hours, where it is a reduction upon the rates per hour, unless at the time of the hiring he expresses his intention to engage the carriage for that specific time, that is, that he should state at the first whether he takes the carriage for 5 hours or for 9 hours. I therefore move that the following words be substituted for the present foot-note to the schedule:—

'The above fares to be paid according to time, unless at the commencement of the hiring the hirer expresses his intention of paying according to distance. In the case of a second class carriage the hirer cannot avail himself of the half day or whole day rate unless at the time of hiring he engages the carriage for the half day or whole day as the case may be.'

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR seconded the motion.

The HON'BLE SIR ALFRED CROFT said:—"I feel some slight difficulty in voting for this amendment. Suppose the hirer has a lot of shopping to do, and does not know whether he will require the carriage for 3, 4 or 5 hours; the driver is quite willing to be hired on these indefinite terms; if it so happens that at the end of 3 or 4 hours the hirer does not want to discharge the carriage, but wishes to keep it till the completion of 5 hours, why should he lose the advantage of the 5 hours' rate merely because he did not make a specific contract with the driver beforehand? I am supposing the case where there is a reduction of charge for the fifth hour."

The HON'BLE MR. WALLIS said:—"I think that this proposal will, to a great extent, remove the anomaly referred to by the Hon'ble Dr. Mahendra Lal Sircar, namely, that the charge for 4 hours is Re. 1-14, and for 5 hours only 2 annas more. If a contract is entered into previously to the hiring, the anomaly will, to a great extent, be removed."

The HON'BLE THE PRESIDENT said:—"The practical effect of the amendment is that the advantage to be gained by the hiring of a second class carriage for half a day of 5 hours will be the payment of 2 annas for the fifth hour, instead of 6 annas. My hon'ble friend thinks it will not be generally practicable for the hirer to say beforehand that he will take the carriage for 5 hours, and that he does not see why the hirer should not get the advantage of the lapse of time that may occur. But I think what has fallen from the Hon'ble

Mr. Wallis shows that the effect of the present amendment will be that the driver cannot get rid of the hirer at the end of the fourth hour, and therefore he will be rather an unwilling party to the contract. It seems to me only right that the contract should be made at the commencement of the hiring and that the proposal will be equally fair to the hirer and to the driver."

The Motion was put and agreed to.

The HON'BLE MR. WALLIS moved that the Bill, as now amended, be passed.

The Motion was put and agreed to.

The HON'BLE THE PRESIDENT said:—"In declaring the Bill to be passed into law subject to the approval which we hope to get, and which I have little doubt we will get, of the Government of India, I would only say two words before we break up: one, to express my thanks, on behalf of the Government of Bengal, to the Hon'ble Mr. Wallis for the excellent and practical way in which he has conducted the business of preparing the Bill for the Council; and the other is a word addressed to the Municipal Commissioners. I trust that they will bear in mind what has fallen from the Hon'ble Sir Alfred Croft in regard to his recommendation that they should appoint at least two capable Inspectors to ensure the satisfactory carrying out of the provisions of this Act—Inspectors who will see not only that these hackney-carriages are more decent and comfortable, that the drivers are better dressed and better able to drive with less danger to human life, but above all that there should be more humanity felt for the animals which are driven in these carriages, and that the reproach thrown upon us—and I think very justly thrown upon us—that there is no town in the whole of the British Empire in which the hackney-carriages and animals are such a disgrace to civilization as they are in Calcutta, will be removed. Neither in Bombay nor in Madras nor in Karachi, nor even in a little town like Hyderabad in Sind, can you find anything comparable to the disgraceful state of the carriages or the miserable condition of the ponies which are driven in third class carriages in Calcutta, and I hope sincerely that the effect of the passing of this Act will be to prevent the recurrence of any such sights as those which inflict the eyes and the hearts of philanthropic people at the present day.

"There is a new clause in the Act which authorizes the Municipality to pass bye-laws which shall come into force after the confirmation of the Government. I have considered very carefully whether this would be a sufficient

protection to the public. I was very much inclined to propose that more power should be given to the Government, so that they should be able not only to confirm the bye-laws, but if they found that the Commissioners did not pass bye-laws sufficient to meet the spirit of the Bill and the object of the Legislature, that the Government should have the power to take the initiative to draw up bye-laws or at least to modify and amend those framed by the Commissioners. The Bill as it now stands does not give that power. After careful consideration, and after discussing the subject with many gentlemen who were well able to advise me, I came to the conclusion that it was not desirable to propose any such amendment. I think we have reason to believe that we can trust the Municipal Commissioners to follow the spirit in which we have been acting, to follow the spirit which has been expressed by the public press and by many public Corporations, and the views which have led to the formation of the present Bill. I trust that in a very short time the Commissioners will draw up a set of bye-laws which will fully meet the spirit in which this law has been drawn up, and that they will appoint a suitable body of officers, capable and responsible, who will effectually see that the provisions of the law are carried out."

The Council adjourned *sine die.*

GORDON LEITH,

Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 19*th August*, 1891.

Reg. No. 458G—400—29-8-91.